

FEDERAL MARITIME COMMISSION

SPECIAL DOCKET NO. 1695

APPLICATION OF SEA-LAND CORPORATION
ON BEHALF OF SEA-LAND SERVICE, INC.
FOR THE BENEFIT OF ITW HI-CONE, LTD.,
REPUBLIC OF IRELAND

ORDER OF REMAND

The Commission determined to review the Initial Decision ("I.D.") of Chief Administrative Law Judge Charles E. Morgan ("Presiding Officer") issued in this proceeding. The Presiding Officer granted the application filed pursuant to section 8(e) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. § 1707(e), by Sea-Land Corporation on behalf of Sea-Land Service, Inc. ("Sea-Land") for the benefit of ITW Hi-Cone, Ltd.¹ In its application, Sea-Land, a member of the Gulf European Freight Association ("GEFA"), asks permission to waive collection of \$5,571.21 of the freight charges apparently collected on a shipment of synthetic resin from Houston, Texas, to Cork, Republic of Ireland.²

¹ However, the tariff notice prescribed in the I.D. fails to limit the application of the corrected tariff to Sea-Land's shipment, and the effective date of that tariff should be July 2, 1988, instead of July 1, 1988.

² Sea-Land is asking for a waiver, whereas the application implies that freight charges in the amount of \$7,600 were paid by the consignee ITW Hi-Cone, Ltd., and \$124.08 by the shipper, Union Carbide Corporation ("Union Carbide").

At the request of Union Carbide, a shipper of synthetic resins, Sea-Land asked GEFA in March of 1988 to establish a commodity rate for heat sensitive thermo plastics of \$75.00 per 1000 kilos, minimum 1800 kilos in 20-foot house-to-house containers, inclusive of an Irish ports arbitrary. The rate (Item 53335001) GEFA published effective April 13, 1988, was due to expire on June 30, 1988. Effective June 1, 1988 GEFA published a general rate increase ("GRI") applicable to all rates except those with an expiration date. As further explained in the application,

In early June, Union Carbide contacted the Sea-Land Commercial Manager of Chemicals and Manufactured Goods, Mr. Timothy Wiggenhorn, and requested the continuation of ITEM NO. 53335001 beyond the June 30, 1988 expiration date. The Pricing Manager agreed to submit the proposal to GEFA, to continue the commodity description, and the rate level would be revised on a per 20 foot container basis to reflect the application of the GRI. The proposal, however, was not timely submitted to GEFA and the item expired. At the time that the shipper contacted Mr. Wiggenhorn, the Pricing Department was being restructured and Mr. Wiggenhorn was reassigned to other duties. During the transition, the request to amend ITEM NO. 53335001 was misplaced. When the new Commercial Manager of Chemicals, Mr. Paul Constantino, learned of the error, he submitted the proposal to GEFA and ITEM NO. 53335001 was subsequently republished with a rate level of \$1410.00* per 20 foot H/H container

* The prior rate level of \$75.00 per 1000 kilos times the minimum weight of 18000 kilos per 20 foot container plus the GRI of \$60.00 = \$1410 and includes the Irish ports arbitrary.

It appears from the foregoing that all Union Carbide asked for was the continuation of Item No. 53335001 beyond the June 30 expiration date, i.e., the \$75.00 per ton in 20-

foot containers rate, subject only to a scheduled general rate increase.³ Instead, the corrective tariff published on October 25, 1988 (which would be the basis for a refund or waiver) shows a lump sum per container rate ("LSPC") of \$1,410. This raises the following questions:

(1) When "in early June" did Union Carbide contact Sea-Land?

(2) When did the restructuring of the Pricing Department occur, that is, when did Mr. Constantino replace Mr. Wiggenghorn?

(3) When did Union Carbide request and Sea-Land agree to the LSPC rate instead of the \$75.00 per ton rate subject to the GRI?

Mr. Constantino also mentions that Union Carbide shipped synthetic resins on a regular basis. However, although Sea-Land did carry one shipment between July 1, 1988 and December 29, 1988, it is unknown whether shipments of the same commodity were carried by other GEFA members during the same period of time.

Finally, there is the question of whether Sea-Land could have had the agreed-to rate filed by independent action within the time it agreed to the rate and the time it

³ This is also confirmed by Mr. Constantino who in his affidavit refers to Item No. 53335001:

The item published a rate of \$75.00 per ton of 1,000 kilos, minimum 18,000 kilos per 20 foot house to house container, inclusive of Irish arbitrary, and reflected an expiration date of June 30, 1988. The expiration date excluded the item from application of a general rate increase which became effective June 1, 1988. The shipper made a request to delete the expiration date and continue the Thermo Plastics commodity description in the tariff

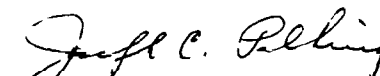
took delivery of the shipment on July 1, 1988, if the rate proposal had been timely submitted to GEFA and denied by it. See Application of TWRA et al. for the Benefit of Darrell J. Sekin & Co., Inc. as Agent for Bruce International Corporation, 23 S.R.R. 1693 (1987).

In summary, it would appear that more information is needed to determine whether the application meets all the requirements of section 8(e) of the 1984 Act. Consequently, the proceeding will be remanded to the Presiding Officer for the purpose of obtaining additional information and issuance of a supplemental initial decision.

THEREFORE, IT IS ORDERED, That the Initial Decision served in this proceeding is vacated.

IT IS FURTHER ORDERED, That the proceeding is remanded to the Presiding Officer for further action consistent with this order and the issuance of a Supplemental Initial Decision.

By the Commission.


Joseph C. Polking
Secretary